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in the Supreme Court of the United States

OCTOBER TERM, 1985

STATE OF CALIFORNIA, et al.,
Appellants,

vs.

CABAZON BAND OF MISSION INDIANS, et al.,
Appellees.

On Appeal from the United States Court of Appeals
for the Ninth Circuit

BRIEF OF THE SEMINOLE TRIBE OF FLORIDA AND THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA OF MINNESOTA AS AMICI CURIAE IN SUPPORT OF THE APPELLEES

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INTEREST OF THE AMICI CURIAE

The Seminole Tribe of Florida and the Fond Du Lac Band of Lake Superior Chippewa of Minnesota operate bingo games on their respective reservations.

Those games attract non-Indians. Both Florida and Minnesota permit bingo to be played pursuant to statutory schemes which regulate the conduct of the games. *See* §849.093, Fla. Stat. (1985); §349.11 *et seq.*, Minn. Stat. (1985).

The Seminole Tribe and the Fond Du Lac Tribe have a substantial interest in this case. Affirmance of the Ninth Circuit's opinion will maintain the status quo, which for the Seminole's has been the product of the Fifth Circuit's decision in *Seminole Tribe v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020. Reversal may affect the conduct of Seminole and Fond Du Lac bingo. Therefore, the Seminole Tribe and Fond Du Lac Tribe submit this amicus curiae brief urging affirmance of the Ninth Circuit's opinion precluding enforcement of California's bingo laws on Indian reservations.

THE SCOPE AND SUMMARY OF THE ARGUMENT

We leave the detailed analysis of case law to the parties and the other amici curiae.[1] The purpose of this Brief is to provide the Court with some insight into how bingo revenues have enabled the Seminoles and the Fond Du Lacs "to rehabilitate the Indian's economic

[1]These amici curiae adopt the legal arguments of the Appellee Tribes. We do not believe that the balancing test applies to this case. However this Brief does seek to flesh out some of the various factors which are encompassed by that test so that if the Court does opt for its mode of analysis, the Court will have some idea of the important contributions bingo has made to the health and welfare of the lives of members of the Seminole and Fond Du Lac Tribes.

life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145,152 (1973), quoting H.R.Rep. No. 1804, 73 Cong., 2d Sess., 6 1934, explaining the intent and the purpose of the Indian Reorganization Act of 1934.

We also seek to inform the Court regarding the support the United States Bureau of Indian Affairs has provided for the creation and maintenance of bingo and how that support has contributed to the improved vitality of Indian life.

Finally, we comment on California's claims of a "serious risk of organized crime infiltration" and discuss why those fears are unsupported by the record, unsupported by the literature, and unfounded in fact. And we suggest that if the Court is inclined to give decisive weight to California's assertions, this case should be remanded to the District Court to determine whether those claims are supported by evidence.

I

THE IMPORTANT INTERESTS SERVED BY THE CONDUCT OF INDIAN BINGO

A. The General Principles

A starting point is:

> The principle of tribal self government, grounded in notions of inherent sovereignty and in congressional policies, seeks an

> accomodation between the interests of the Tribes and the Federal Government on the one hand and those of the State on the other.
>
> *Washington v. Confederated Tribes of Colville*, 447 U.S. 154,156 (1980).

It is no secret that the Tribes' interests are economic. The advent of Indian bingo has allowed the Seminoles and Fond Du Lacs to pursue their rights to self government and self improvement and to realize for the first time the promise of the Indian Reorganization Act of 1934. Congressman Udall recently commented upon the Tribes' need for revenue in the face of federal budget cutting measures:

> For them it is literally a matter of life and death. It is little wonder that they have so desperately turned to gaming for revenue. It is hard to understand those who would deny them this small source of hope.
>
> H.R.Rep. No. 488, 99th Cong. 2d Sess. (March 10, 1986) 12.

B. The Experience of the Seminole Tribe and the Fond Du Lac Band of Lake Superior Chippewa

1. The Seminole Tribe

There are 1669 enrolled members of the Seminole Tribe of Florida. Slightly less than half are under 18.

In 1966 the unemployment rate among Tribe members was 85 percent. At that time there were few

employment opportunities with the Tribe. In August, 1986, the unemployment rate was 30 percent. In August, 1986, 59 percent of employed Seminole tribal members were employed by the Tribe.

The Seminoles have five reservations in Florida, the three largest of which (Big Cypress, Brighton and Hollywood) are each home to about one-third of the Tribe's members. Big Cypress and Brighton are primarily low level wetlands to poorly drained sandy soils, and land use is limited to cattle operations, some truck crops and citrus, and aquaculture. Hollywood, the smallest of the three major reservations, is in the metropolitan area of Broward County, Florida and, in addition to housing tribal headquarters, is the center of tribal commercial development.

The sale, leasing or mortgaging of Indian Trust lands are governed by a complex scheme of federal regulations and statutes. *See*, for example, 25 CFR §§152.22, 152.23, 162.3, 162.5, 162.8, 162.12; 25 U.S.C. §177. Thus tribal development of its property is limited both by the nature of the property and the governmental processes which affect any potential development.

A primary source of income is bingo. Seminole bingo commenced in 1979. Since then those profits have enabled the Tribe to enhance the health, housing, education, law enforcement and communications needs of tribal members in ways that are both basic and extraordinary.

In 1982 a multi-purpose community center was built on the Hollywood Reservation to house a day care

center, a senior citizens center, and a health care center. Tribal member homes on the Big Cypress, Brighton and Hollywood Reservations were rehabilitated in 1980 and 1982 to bring them up to code requirements. In 1984 and 1985 Community Centers were constructed in Big Cypress and Brighton to house senior citizens, day care, and education programs. These facilities were all partially funded by the Tribe's revenues. Last year a medical social worker was hired, paid solely by the Tribe. The Tribe provides funds for nutrition programs, health delivery systems, commodity food programs, community care for the elderly and adult education programs.

Between 1945 and 1977 an average of 4.3 tribal members per year graduated from high school. From 1978-1986, there were an average of 13 high school graduates per year. From 1945 to 1977 nine tribal members received college or junior college degrees. From 1978 to 1986 twenty-eight members graduated from college or junior college, including one person who received a masters degree, and another who received a law degree. The Tribe now provides scholarships for worthy students, and of the 27 identifiable special education programs available to tribal members, 20 are either wholly or partially funded by the Tribe.

Since 1982 the Tribe has funded a Seminole Cultural Education program which operates on all the residential reservations. The program, which utilizes bilingual University of Miami specialists and other experts, seeks to retain the cultural values, knowledge and language of the Seminoles and heighten the awareness of the Seminole children to the uniqueness of their heritage.

A tribal newspaper, the *Seminole Tribune*, began publication in 1983 and is distributed to all tribal members as well as government offices, other Tribes, and various others interested in news of the Seminoles.

Finally, in 1981 the Seminole Police Department was created with law enforcement jurisdiction over the separate reservation areas. In the 1985-86 fiscal year the Department employed 26 full time personnel, with the Tribe bearing approximately 85 percent of the total cost of the Department's budget. The remaining portion is funded by the Bureau of Indian Affairs. The Department has been successful in apprehending non-Indian narcotics violaters and in the past two years has confiscated two planes and several vehicles engaged in narcotics violations in Indian country.

Bingo revenues have been an important part of the Seminole Tribe's ability to enhance and protect the lives of its members.

2. The Fond Du Lac Band of Lake Superior Chippewa

The Fond Du Lac Band of Lake Superior Chippewa has 4025 enrolled members, approximately 40 percent of whom are under 18. As recently as 1978 the unemployment rate among the members of the Tribe was 50 percent. Today the unemployment rate is about 20 percent, in large part because approximately 25 percent of employed members of the Fond Du Lac Band of Lake Superior Chippewa are employed by the Tribe. Only the Tribe has been able to provide these employment opportunities to its members.

The Fond Du Lac Band of Lake Superior Chippewa Reservation's presently recognized boundaries consist of approximately 100,000 acres in rural Northeastern Minnesota near the Town of Cloquet and a small parcel of land located in the center of Duluth, Minnesota. The rural reservation is comprised of a checkerboard of ownership with only one third remaining in some form of Indian ownership. Because all the prime land was sold by the United States Government to land speculators at the turn of the century, the remaining lands are generally of poor quality, being principally swamps, and generally located in poorly accessible areas. To provide additional housing for its members, the Fond Du Lac Band of Lake Superior Chippewa will be required to purchase additional land. The tribal wild rice beds and fisheries were substantially destroyed by the construction and subsequent abandonment of a system of drainage ditches by the Civil Conservation Corps in the 1930's. The timber resources were destroyed by a fire caused by Northern Pacific Railroad in the 1930's and only in the last ten years has any reforestation and timber management of any consequence occurred.

As with the Seminoles, the sale, acquisition, lease or mortgaging of Indian Trust Lands is controlled by a complex scheme of federal regulations and statutes. See, for example, 25 U.S.C. §177, 25 CFR §§152.22 and 23.

Therefore, the Fond Du Lac Band of Lake Superior Chippewa, in furtherance of their Constitutional Purpose (Constitution of the Minnesota Chippewa Tribe, Article I) commenced a tribal bingo operation in 1981 on a

portion of the Cloquet Reservation. Since then it's revenues have enabled the Tribe to improve the employment, health, housing, education, mental health, conservation and communications needs of its members.

For example, in 1985 the Fond Du Lac Band of Lake Superior Chippewa sold $750,000.00 in tribal bonds secured by its bingo revenues to finance the construction of a health care center on the rural Fond Du Lac Reservation. The tribal bingo revenues have also been used to purchase equipment for Fond Du Lac Manufacturing, a tribal metal fabricating business, and to secure a line of credit for the facility, thus increasing employment opportunities. These revenues have also been used to acquire equipment for the tribal construction company (Fond Du Lac Heavy Equipment & Construction Co., Inc.) and to help secure letters of credit for the construction company because of the unavailability of bonding for tribal construction companies, again increasing employment opportunities.

To promote better communications with its members and with its non-Indian neighbors, in 1984 the Fond Du Lac Band of Lake Superior Chippewa started a biweekly tribal newspaper. In cooperation with the Cloquet Pine-Knot, the local newspaper of record, the tribal newspaper is distributed free of charge to all of its subscribers and to all households on the reservation.

Since the advent of bingo on the Fond Du Lac Reservation the Tribe has started a 7-12 grade school financed and equipped, in part, by bingo revenues. The school is open to all residents of the Reservation. Prior

to the opening of the school 9.6 percent of members of the Tribe completed high school. Since then 80 percent of those eligible to graduate in any given year have completed high school.

The Tribe, in addition to supplementing the funding of the school, purchased equipment and school buses and participated in financing the expansion of the school. The Tribe has also funded programs to encourage its children in schools on or near the Reservation to complete their education. One such program, called the "Washington Experience", is open to all Fond Du Lac children in grades 10-12. Two children from each of the four school districts on and around the reservation are selected annually on the basis of a competitive essay and academic excellence during the school year to spend a week in Washington, D.C. to view first hand the workings of our national government.

The funds for these experiences and for much of the other newly available tribal opportunities are the product of bingo revenues.

The Federal Government has provided important assistance to the expansion of Fond Du Lac economic and social development through bingo. In 1983, the Department of Housing and Urban Development provided a $275,000 grant to construct the physical facility for bingo on the Reservation in Cloquet.

The Office of Community Service of the Department of Health and Human Services provided a grant of $750,000 in 1985 to aid in financing the construction of the Fond Du Lac Duluth bingo facility.

The Reservation in Duluth, which is the site of a recently opened bingo facility, was acquired in Trust for that purpose by the Department of Interior in 1985, pursuant to 18 U.S.C. §465. This acquisition was part of a joint economic development partnership agreement between the City of Duluth and the Fond Du Lac Tribe. That agreement will ultimately make the City of Duluth a 24.5 percent partner in Fond Du Lac bingo profits, and in return the City has obligated itself to construct a ramped parking garage for Fond Du Lac bingo patrons. The Bureau of Indian Affairs assisted in the preparation of that agreement and approved its contractual terms, including a requirement that the Bureau receive copies of quarterly audited profit and loss statements of the Duluth-Fond Du Lac bingo facility.

Thus the Federal Government's supportive assistance has been an important factor in Fond Du Lac efforts to rehabilitate their economic life and "to develop the initiative destroyed by a century of oppression and paternalism." *Mescalero Apache Tribe v. Jones*, 411 U.S. at 152, *supra*.

II

THE STATE'S CONCERN ABOUT ORGANIZED CRIME IS NOT SUPPORTED BY THE RECORD NOR BY THE HISTORY OF INDIAN BINGO

The Ninth Circuit found "there is no evidence whatsoever that organized crime exists on these Indian reservations." *Cabazon Band of Mission Indians v. County of Riverside*, 783 F.2d 900,904 (9th Cir. 1986).

California has offered nothing to contradict that finding, nor has the State advanced any principled basis for concluding that the specter of organized crime hovers over Indian bingo.

Indeed, California's exclusive reliance on "Organized Crime Studies", Brief of California at 27-29, belies its argument that Indian bingo creates "risks that do not arise concerning [the state authorized] charitable bingo." *Id.* at 26 (footnote omitted)

The California cited "studies" predate the advent of any Indian bingo.[2] Those studies voice concern for the integrity of *charitable* bingo, given the proliferation of charitable bingo events. Charitable bingo's pervasiveness and the income it generates (National Gambling Commission Report, JA at 132-33) sparked the call for regulation. Obviously the statewide operation of perhaps thousands of weekly charitable bingo events makes state regulation difficult, problematic and ineffectual.

Florida's statutorily authorized bingo is similar to that permitted in California. *See* §849.093, Fla. Stat. (1985). Minnesota shares a similar statutory scheme. *See*, §349.11 *et seq.*, Minn. Stat. (1985). The multitude and low visibility of state permitted bingo, which makes regulation inherently difficult, is in stark contrast to Indian bingo.

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[2]The National Gambling Commission Report was issued in 1976. (JA 119) The California Attorney General's Task Force on Legalized Gambling and Organized Crime Report was issued in 1971. See California Brief at 29.

The Seminoles have two bingo facilities; one on the Hollywood reservation and one on the Tampa reservation. The Fond Du Lacs also have two facilities, one on the Cloquet portion of the reservation and the other on Trust lands in Duluth. California suggests that approximately 100 Indian bingo games exist nationwide (Brief of California at 6).

Unlike the pervasive nature of state authorized charitable bingo, Indian bingo is limited, readily identifiable, easily monitored and extensively regulated by the Tribes. That is so since the Tribes' financial well being depends upon the games being honestly run and the generated income being closely monitored.

California quotes the Congressional testimony of a Deputy Assistant Attorney General as its "evidence" of the risk of "criminal infiltration" of Indian bingo. Brief of California at 26, n.16. That testimony merely states the concern that where substantial monies are involved, trouble could brew. But it does not address whether those concerns are substantiated by the facts of Indian bingo; it does not purport to be "evidence" tested by the crucible of adversary examination; it does not purport to support the notion that it should be the basis for eroding historic respect for Indian sovereignty.

Given California's single focus state interest of organized crime infiltration and the dearth of any actual record evidence to support its claim, the California "interest" should be accorded little, if any, weight. At the least, this case reminds one of the Court's language in *Askew v. Hargrave*, 401 U.S. 476 (1971), admonishing

against deciding serious constitutional claims "without fully developing the factual record at a hearing." *Id.*, at 479.

This case presents a grave threat to the sovereignty of Tribal nations and to the health, welfare and safety of thousands of Tribal members. Deciding it adversely to those interests based on unfounded and unsupported suppositions of "organized crime" is a disservice to the parties and the important issues presented by this case.

If the Court decides to exercise plenary review of this case, the Ninth Circuit decision should be affirmed. But if the Court seriously considers reversal of that decision, this case should instead be remanded to allow the District Court to conduct an evidentiary hearing to determine whether there is any factual basis for California's claimed concerns of "organized crime."

We are confident that if such a hearing were to occur, California's argument to this Court would be found to be devoid of factual merit.

CONCLUSION

For the foregoing reasons, and the reasons advanced by the Appellees and other amici curiae, the decision below should be affirmed. In the alternative, the case should be remanded to allow the District Court to determine whether California's "organized crime" and "gambling policy" have a factual basis justifying the erosion of Indian sovereignty.

Respectfully submitted,

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